

some memorandum of it in writing is required;²⁸ but it may be proved by a deed from the sheriff, or his return, or other memorandum in writing, or from the whole judicial proceedings collectively, *Estep v. Weems*, 6 G. & J. 303; *Hanson v. Barnes' lessee*, 3 G. & J. 359; *Duvall v. Waters*, 1 Bl. 569; *Alexander v. Walter*, 8 Gill, 259; *Fenwick v. Floyd's lessee*, 1 H. & G. 172; *Barney v. Patterson*, 6 H. & J. 182; *Thomas v. Turvey*, 1 H. & G. 435; *Wright v. Orrell*, 19 Md. 151. But it has been doubted whether sales by trustees under a decree of a court of equity are within the Statute, *Harrison v. Harrison*, 1 Md. Ch. Dec. 331; *Frieze v. Glenn*, 2 Md. Ch. Dec. 361.²⁹

*IV. This section, though there are opinions to the contrary, see **523** *Reade v. Lamb*, 6 Exch. 130, does not make the agreements therein mentioned void, but only prevents them from being enforced by action if its requirements are not complied with, *Crane v. Gough*, 4 Md. 316; *White v. Coombs*, 27 Md. 489.³⁰ It has been held, therefore, that an action could not be maintained in England on a parol agreement not to be performed within a year, made in France, though valid and enforceable there, *Leroux v. Brown*, 12 C. B. 801: see the remarks of Willes J. on this case in *Gibson v. Holland*, 1 L. R. C. P. 1.

Contracts executed on both sides—On one side.—Where the contract is executed on both sides it is just as valid as if it had been in writing, *Crane v. Gough supra*,³¹ and a party may always defend under such a contract when sued for any act done under it. That was a case of a parol ante-nuptial agreement. And in a like case, part-execution was, as to personal property at least, held a good defence to an action at law for the chattels actually delivered under it, *Bowie's Ex'r v. Bowie*, 1 Md. 87. But the general rule is that, at law, the execution of his part of a contract within the Statute by one of the parties will not enable such party to sue the other party upon the contract for non-performance on his part, though there be nothing to be done but to pay the consideration, *Cocking v. Ward*, 1 C. B. 858; *Smart v. Harding*, 15 C. B. 652, and see *Kelly v. Webster supra*.³² However, where a contract for the sale of lands is executed on the part of the vendor by conveyance of the land and delivery of possession, a duty is raised on the part of the vendee to pay the consideration, and *indebitatus*

²⁸ *Sentman v. Gamble*, 69 Md. 304; *Warfield v. Dorsey*, 39 Md. 299.

²⁹ They are not within the Statute; nor are sales made under a power contained in a mortgage; nor are public sales by executors under powers in wills. *Warfield v. Dorsey*, 39 Md. 299; *Warehime v. Graf*, 83 Md. 101.

³⁰ *Equitable Gas Light Co. v. Baltimore Co.*, 63 Md. 285; *Britain v. Ros-siter*, 11 Q. B. D. 125. The Statute does not deal with the validity of the agreement but only with the evidence to prove it. *In re Holland*, (1902) 2 Ch. 375; *Maddison v. Alderson*, 8 App. Cas. 467.

³¹ *Nicholson v. Schmucker*, 81 Md. 549; *Bruns v. Spalding*, 90 Md. 361; *Huntley v. Huntley*, 114 U. S. 394.

³² A contract invalid under the Statute cannot be enforced either directly, or indirectly, by action or defense; though it may operate as a license for the doing of an act in performance of the contract. *Baker v. Lauterbach*, 68 Md. 64; *Hamilton v. Thirston*, 93 Md. 218.